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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

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No. 450

THE FEDERAL LAND BANK OF BERKELEY,
Petitioner,

vs.

FLORENCE DAVIS SMITH and HARVEY W. SMITH,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE NINTH
CIRCUIT AND BRIEF IN SUPPORT THEREOF**

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*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Statement of the Matter Involved

Petitioner is a secured creditor of the debtors. There is involved herein a decision by the Circuit Court of Appeals, Ninth Circuit, wherein the first sentence of Section 75(s) of the National Bankruptcy Act is construed, and is interpreted to mean that *after* the expiration of a voluntary extension granted a debtor under Section 75(a-r) the debtor may become aggrieved and amend his petition under Subsection (s), regardless of leave to foreclose, and waiver.

Summary of Facts

Debtors' petition under Section 75(a-r) of the National Bankruptcy Act was approved on September 10, 1937. (TR 2)

Debtors' extension proposal (TR 3-17) was accepted by the required creditors (TR 17-19), and on December 14, 1937, it was approved by the Conciliation Commissioner (TR 19) and was thereafter confirmed by the United States District Judge.

The three-year extension contemplated in said extension proposal expired November 2, 1940 (TR 40), as found by the Conciliation Commissioner, from which finding there was no review.

On February 18, 1941, The Federal Land Bank of Berkeley and the Federal Farm Mortgage Corporation, secured creditors, filed a petition for authority to have the power of sale under their deeds of trust exercised, or the proceedings dismissed. (TR 92-99)

On February 9, 1942, the Conciliation Commissioner made an order granting said secured creditors authority to have the power of sale in their deeds of trust exercised. (TR 39-43)

On May 19, 1942, before the power of sale in either deed of trust could be exercised, the debtors filed an amended petition under Section 75 (s) (TR 20-23) and were adjudicated bankrupts thereunder on June 11, 1942. (TR 23-24)

On July 21, 1942, said secured creditors filed a petition for an order vacating said adjudication. (TR 24-38)

On December 17, 1942, the Conciliation Commissioner denied petition. (TR 45-48)

On review a district judge, under date of July 9, 1943, reversed the Conciliation Commissioner's order on the ground that the debtors had waived their right to amend under Subsection (s). (TR 64-68)

On appeal to the Circuit Court of Appeals, Ninth Circuit,

the order of the District Judge was affirmed on another ground, it then being held that it was unnecessary to decide the case on the basis of a waiver. (147 F. (2d) 505.)

On rehearing the Circuit Court of Appeals, Ninth Circuit, reversed itself. (TR 173-185) It is this decision which petitioner desires to have reviewed.

Jurisdiction of this Court

1. The jurisdiction of this Court is invoked under 28 U.S.C. 347 (a). (Judicial Code, Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938.)

2. The strictly legal questions involved in this case are presented to this Court for the first time and involve the correct interpretation of provisions of Section 75(s) of the National Bankruptcy Act. The questions are important to debtors and creditors alike, and this petitioner believes they should be settled by this Court.

Questions Presented

1. After the term of an extension voluntarily granted by the creditors under Section 75(a-r) has expired; when the debtors have made no move and given no indication of being aggrieved by the extension; when, more than one hundred days after the extension expired, the secured creditors have come into court requesting authority to foreclose and such authority has been granted, do the debtors *then* have the legal right to become aggrieved by the voluntary extension they procured at their request, and be adjudicated bankrupts on an amended petition under Subsection (s), or, in other words, did Congress intend that the provisions of Subsections (a-r) and the provisions of Subsection (s) should be cumulative remedies, or alternative remedies?

2. Under such circumstances does the subsequent adjudication under Subsection (s) nullify the order granting authority to foreclose?

3. Did the Circuit Court of Appeals, Ninth Circuit, err in holding that the findings of the District Judge on the question of waiver were clearly erroneous?

Reasons Relied on for Allowance of Writ

1. The proper interpretation of the statute is of national importance. The Congress definitely enacted Section 75(a-r), the Debtors' Relief Act, for the purpose of providing a method by which distressed farmers could procure relief from their debts without the stigma of bankruptcy. If the construction given the statute by the Circuit Court of Appeals, Ninth Circuit, is correct, no creditor would be justified in granting a voluntary extension, knowing that after it had expired, and after he had taken steps to protect his interest, the debtor could then force a three-year stay upon him by amending his petition. The decision, if not reversed, will effectively nullify the Debtors' Relief portion of Section 75. It is therefore of extreme importance to farmers in general that the decision be reversed.

2. The interpretation of the Statute by the Circuit Court of Appeals is contrary to the express provision of the Statute.

3. The Circuit Court of Appeals erred in holding that the decision of the United States District Judge on the question of waiver was clearly erroneous.

WHEREFORE your petitioner prays that a writ of certiorari be issued by this Court directing that all proceedings in the Circuit Court of Appeals, Ninth Circuit, be certified and forwarded to this Court, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States, and that petitioner may have such other and further relief in the premises as this Court may deem proper.

THE FEDERAL LAND BANK OF BERKELEY
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